

PT 96-26
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

PILLAR OF FIRE CHURCH)		
Applicant)		
)	Docket #	93-16-1401
v.)		
)	Parcel Index	#14-29-208-003
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John W. Mauck appeared on behalf of the Pillar of Fire Church (hereinafter referred to as the "Applicant").

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on January 24, 1996, to determine whether or not Cook County parcel No.14-29-208-003 qualifies for exemption from real estate tax for the 1993 assessment year.

Rev. Davie L. Ramey, pastor and senior administrator of the applicant, testified on behalf of the applicant.

The issues in this matter include first, whether the applicant was the owner of this parcel during the 1993 assessment year. The second issue is whether the applicant is a religious organization. The last issue is whether this parcel was used by the applicant for religious purposes during the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned the parcel here in issue and the buildings thereon during the entire 1993 assessment year. It is also determined that the applicant is a religious organization. Finally it is determined that the applicant used this parcel and the three story residential

building thereon, except for 14 percent of that building, located in the basement, and the garage for religious purposes during the 1993 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel and the buildings thereon did not qualify for exemption for the 1993 assessment year, was established by the admission in evidence of Department's Exhibits 1 through 5A.

2. On June 2, 1994, the Cook County Board of Appeals forwarded an Application for Property Tax Exemption To Board of Appeals, concerning this parcel for the 1993 assessment year. (Dept. Ex. No. 1)

3. On June 8, 1995, the Department notified the applicant that it was denying the exemption of this parcel and the buildings thereon, for the 1993 assessment year. (Dept. Ex. No. 2)

4. The applicant then requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing held in this matter on January 24, 1996, was held pursuant to that request.

6. The applicant acquired this parcel by a warranty deed dated August 19, 1952. (Dept. Ex. No. 1C)

7. This parcel is improved with two buildings, a three story frame residential structure and a garage. (Dept. Ex. No. 1J)

8. Each floor of the residential structure contains an apartment. The basement also contains an area used for church storage and a church office. (Tr. p. 13)

9. This parcel is located next to the parcel on which applicant's church and school are located. (Tr. p. 14)

10. During the 1993 assessment year, Rev. Davie L. Ramey, his wife, four children, two cats and a dog lived in the apartment on the third floor of this building. (Tr. p. 20)

11. Rev. Ramey is an ordained clergyman, who was the pastor of the applicant during the 1993 assessment year. (Tr. p. 21)

12. It was a condition of his employment that Rev. Ramey reside in this apartment. He had no ownership interest in this parcel. (Dept. Ex. No. 1M)

13. During 1993, Rev. Ramey was paid a salary and all of his utilities were paid by the applicant. (Tr. pp. 31 & 32)

14. During 1993, the second floor apartment was occupied by Ms. Margaret Williamson. Ms. Williamson was the head teacher at the applicant's parochial school located on the adjoining parcel. During the 1993 school year, approximately 45 to 50 children attended this school. This school included kindergarten through 8th grade. (Tr. pp. 14 & 15)

15. During 1993, the school operated an after school extended care program, consequently it was necessary that Ms. Williamson live nearby. She did not pay rent. It was a condition of her employment that she live in this apartment. (Tr. pp. 16 & 17)

16. During 1993, Ms. Williamson's duties included counseling with students, parents and staff as well as making curriculum decisions for the school, tutoring students, and acting as liaison between the church and the school. (Dept. Ex. No. 1F)

17. During 1993, Ms. Williamson received a salary from the applicant. She was required to pay her own electric bill. (Tr. p. 32)

18. During 1993, the small apartment on the first floor of this building was occupied by Mr. David Barr. Mr. Barr, although commissioned by the applicant, was not licensed or commissioned by the applicant's national organization. Mr. Barr is not authorized to marry people or to conduct funerals. (Tr. pp. 33 & 34) Mr. Barr prepared a newsletter in his apartment

for another organization, the North Side Ministerial Association. (Tr. pp. 23 & 24)

19. During 1993, Mr. Barr was not a paid employee of the applicant. The applicant required that Mr. Barr pay his own electric and telephone bill. (Tr. p. 32)

20. Mr. Barr was employed away from the church by a Mr. Lyman. (Tr. p. 31)

21. During 1993, Mr. Barr helped clean the church and took care of mowing the property of the applicant. (Tr. p. 33)

22. No evidence was offered that Mr. Barr performed any of his duties for the applicant in his apartment.

23. No evidence or testimony was offered as to how the garage on this parcel was used during the 1993 assessment year.

24. During 1993, the average attendance at applicant's Sunday worship services was approximately 30 persons. During 1993 the applicant's worship services were held in the applicant's church sanctuary located on the parcel which is next to this parcel. (Tr. p. 30)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 205/19.2 exempts certain property from taxation in part as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...and not leased or otherwise used with a view to profit, including all such property owned by churches...and used in conjunction therewith as parsonages...provided for ministers...their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches....

A parsonage,...shall be considered for purposes of this Section to be exclusively used for religious purposes when the church,...requires that the above listed persons who perform religious related

activities shall, as a condition of their employment or association, reside in such parsonage,....

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

In the case of McKenzie v. Johnson, 98 Ill.2d 87 (1983), the Illinois Supreme Court held that the foregoing parsonage exemption was constitutional. Since Rev. Ramey was an ordained pastor of the applicant during 1993, and since it was a condition of his employment that he live there and also since he paid no rent, I conclude that he and his family occupied the third floor apartment in the residential structure on this parcel as his parsonage.

In the case of MacMurray College v. Wright, 38 Ill.2d 272 (1967), the Supreme Court considered whether or not faculty and staff housing owned by a college was used for school purposes. In that case the Court applied a two-part test. First, were the residents of the houses required to live in their residences because of their exempt duties for the college, or were they required to, or did they perform any of their exempt duties there? Since Ms. Williamson was the head teacher of the applicant, and since the applicant operated the extended care after school program during 1993, it was required that Ms. Williamson live in the second floor apartment in the residential structure on this parcel. Consequently Ms. Williamson's apartment qualified for exemption under the first test in the MacMurray case.

The Courts have more recently applied the MacMurray tests to caretaker's residences in Benedictine Sisters of the Sacred Heart v. Department of Revenue,

115 Ill.App.3d 325 (2nd Dist. 1987); Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill.App.3d 420 (2nd Dist. 1987); and also Cantigny Trust v. Department of Revenue, 171 Ill.App.3d 1082 (2nd Dist. 1988), among others. Mr. Barr who lived in the apartment on the first floor, or basement of this residential building, was not an employee of the applicant during 1993. The evidence indicates that he was allowed to live there in exchange for helping clean the church and for taking care of the yard owned by the applicant. While he prepared a newsletter in his apartment it was not for the applicant. In addition, he was employed away from the applicant by a Mr. Lyman. While it was alleged that Mr. Barr was commissioned by the former pastor of the applicant, the duties he performed for the applicant during 1993 were all duties that could be performed by any lay person. In addition it was established that he was not allowed to perform marriages or burials by the applicant, during 1993. Consequently, I conclude that Mr. Barr used his apartment for primarily residential purposes and not religious purposes.

The remainder of the first floor of the residential building was used as an office for Rev. Ramey and for church storage, which I conclude, was for primarily religious purposes.

Since no evidence or testimony was offered as to how the garage was used during the 1993 assessment year, I conclude that the applicant failed to establish that the garage was used for primarily religious purposes, during the 1993 assessment year.

Where, as here, an identifiable portion of the property was used for any exempt purpose while the remainder was used primarily for nonexempt purposes or not at all, the Courts have held that the portion used for exempt purposes qualified for exemption, and the remainder did not so qualify. City of Mattoon v. Graham, 386 Ill. 180 (1944).

Based on the foregoing, I conclude as a matter of law, that the applicant owned this parcel during the 1993 assessment year. I further conclude that the applicant is a religious organization. I also conclude that the three story

residential building qualified for exemption except for the apartment on the first floor occupied by Mr. Barr. The apartment of Mr. Barr occupied 14 percent of the three story residential building. Finally, I conclude that since no evidence was offered concerning the use of the garage during 1993, that the garage and the land on which it stands, did not qualify for exemption during said year.

I therefore recommend that Cook County parcel No. 14-29-208-003 be exempt for the 1993 assessment year, except for 14 percent of the three story residential building, the garage and the land on which it stands.

I further recommend that 14 percent of the three story residential building, the garage and the land on which the garage is located, remain on the tax rolls for the 1993 assessment year and that they be assessed to the applicant.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 12, 1996